



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

NH State Corrections Association	*	
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	*	Case No: S-0414-1
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	*	Decision No. 2006-198
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NH State Corrections Association

Petitioner

v.

SEA, SEIU Local 1984

Respondent

And

State of New Hampshire

Respondent

APPEARANCES

Representing Petitioners

John Morin

Representing: State Employees' Association of NH, Inc., SEIU Local 1984

John S. Krupski, Esq.
Cook & Molan, PA

Representing the State of New Hampshire

Michael K. Brown, Esq.
Senior Assistant Attorney General, Civil Bureau

BACKGROUND

On September 22, 2006, the New Hampshire State Corrections Association (hereinafter "the Association") filed a Petition for Certification concerning a bargaining unit comprised of all classified employees of the Department of Corrections. The Association acknowledges that its

petition was filed after the deadline for filing certification petitions given the budget submission date but offers a number of reasons for the late filing per Pub 301.01 (b). The Association seeks an election with respect to the Department of Corrections classified employees bargaining unit. If the petition qualifies for election, then eligible employees could elect having the New Hampshire Corrections Association as their exclusive representative, having the State Employees' Association, SEIU Local 1984 ("SEA") as their exclusive representative, or having no representative.

The State Employees Association, Local 1984 (hereinafter "the SEA") filed its response on October 12, 2006. The SEA questions whether the Association has demonstrated the requisite 30% interest showing. The SEA also claims that the certification petition should be dismissed because the Association's stated reasons do not justify the late filing of the petition and an election cannot be conducted within the time frame imposed by RSA 273-A:11.

On October 17, 2006 the State of New Hampshire filed a special appearance and argues, like the SEA, that the Petition was untimely filed and an election cannot be conducted within the RSA 273-A:11 time frame.

The undersigned hearing officer conducted a pre-hearing conference at the PELRB offices, Concord, New Hampshire on October 27, 2006.

DECISION AND ORDER

JURISDICTION

The PELRB has jurisdiction over certification petitions involving public employers, public employees, and employee organizations pursuant to the general provisions of RSA 273-A and the provisions of Administrative Rule Pub 301.03.

DISCUSSION

During the course of the pre-hearing conference the parties agreed that no further hearing is required in this matter as, following the pre-hearing conference, the PELRB will have the information necessary to decide whether this matter should proceed to election.

The current certification for the Department of Corrections is dated May 6, 2004 and is contained in PELRB Decision No. 2004-037, issued in case No. S-0414. The bargaining unit consists of "all classified employees with the exception of those classified employees excluded from the definition of public employee under the provisions of RSA 273-A:1, IX."

Pub 301.01 (f) provides that "[a] petition filed under this section shall also contain a statement that at least 30% of the employees in the proposed bargaining unit wish to be represented by the employee organization named in the petition." The PELRB is charged with determining whether this requirement has been satisfied based upon the PELRB's review of the confidential certification cards. The public employer is obligated to provide the PELRB with "a complete list of names of the employees in the proposed bargaining unit to allow the board to

compare this list with the names submitted in support of the petition." Pub 301.01 (n). Probationary employees will not be counted for purposes of the 30% interest question, nor are they eligible to sign certification cards or vote at election. The same is true with respect to unfilled positions. See PELRB Decision No. 2006-186 (October 19, 2006)(Decertification proceeding involving Department of Labor employees).

In the present case the employer provided the PELRB with a list of the names of employees in the Department of Corrections (the "employee list"). The employee list identifies, among other information, the employee's position, date of hire, whether a particular employee is a human resource employee whom the employer and the SEA have agreed is confidential and who has been treated as a confidential employee during the recent tenure of the bargaining unit, and whether employees are full or part time. The employee list was reviewed by all parties at the pre-hearing conference.

Based upon the representations of the parties at the pre-hearing conference, including offers of proof, as well as the information contained on the employee list, the PELRB finds that of the 1,034 employees on the employee list, the 14 employees identified by the pre-fix "9NON" are non-classified employees or board or commission members who are excluded from the bargaining unit. The same is true with respect to the last 11 employees on the employee list. The parties agree that these employees occupy unclassified or appointed positions or other positions disqualified from belonging to the bargaining unit because they are not considered to be "public employees" under RSA 273-A:IX, and no party asserts or claims they are part of the bargaining unit. Likewise, the 30 confidential employees (identified by the letter "Y" following the date of hire column) are also excluded. The employee list also contains between 59 to 73 probationary employees (depending on whether the expiration of the one year probationary period is measured as of the date the petition was filed or the date of this order) who are excluded from the bargaining unit. An additional probationary employee (Patton Carter) is already excluded as a confidential employee and is not included in the probationary employee exclusion.

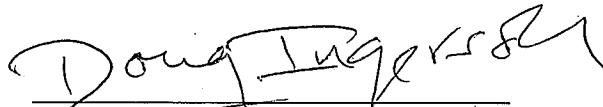
Part time employees are part of the bargaining unit as they work on a regularly scheduled basis. They are considered part time because they work fewer hours than the full time employees. The Association included the part time employees on the list of bargaining unit employees filed with its petition. At the pre-hearing Mr. Morin indicated that part time employees work on a regular basis, and the employee list shows that most of the part time employees work close to full time and have been Department of Corrections employees for several years or longer.

Based upon the foregoing understanding of which Department of Correction employees are actually classified employees who belong in the bargaining unit (and hence who are eligible to submit certification cards), the PELRB has determined that a number of the 283 cards submitted by the Association in support of the petition are invalid and cannot be applied to the 30% interest showing. It should be noted that one rejected card was completed by an employee who sufficiently altered the content of the card such that it cannot be construed as an endorsement of the New Hampshire State Corrections Association as exclusive agent and representative for the purposes of collective bargaining. The other rejected cards were signed by

employees outside the bargaining unit discussed above. Based on its review of the valid certification cards and the number of employees in the bargaining unit, the PELRB finds that the Association has not met the 30% interest threshold. This is true regardless of whether an employee's probationary status is determined as of September 22, 2006 or the date of this order. It would also be true even if all confidential employees are included in the bargaining unit.

Accordingly, the Association's petition for certification is dismissed.

So ordered.
October 31, 2006.



Douglas L. Ingersoll, Esq.
Hearing Officer

Distribution:

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Michael K Brown, Esq.